

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 25-35 are pending in the present application.

Claims 25-35 have been amended in a manner so as to address the formal matters raised in the outstanding Official Action. Claims 36-44 have been cancelled.

In the outstanding Official Action, claims 1-10 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-15 of co-pending Application No. 10/450,781. Applicant believes the present amendment obviates this rejection.

At this time, the Examiner's attention is respectfully directed to the terminal disclaimer attached with this amendment. The terminal disclaimer is directed to U.S. Patent Appln. 10/450,781. As a result, applicant believes that the rejection has been obviated.

In the outstanding Official Action, claims 32-35 were rejected under 35 USC §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants believes the present amendment obviates this rejection.

In imposing the rejection, the Official Action believes that claims 32 and 34-35 are indefinite for reciting the terms "it", "other gases", and "salami-type sausage". However, claims 32 and 34-35 have been amended in a manner so that these terms are no longer recited. As a result, applicant believes that the claims are definite to one of ordinary skill in the art.

Additionally, the Official Action alleged that claims 33 and 35 were indefinite for reciting the term "the dry sausage". The Official Action alleged that the term lacked antecedent basis. However, claims 33 and 35 have been amended in a manner that is believed to remedy this rejection. In particular, claim 33 has been amended to recite that the claimed casing surrounds "a dry sausage". Claim 35 has been amended so that it is now dependent on claim 33. Thus, the term "the dry sausage" finds antecedent basis in claim 33.

In view of the above, applicant believes that the claimed invention is definite to one skilled in the art.

Claims 25-35 were rejected under 35 USC §103(a) as allegedly being unpatentable over FREY et al. in view of RAMESH. This rejection is respectfully traversed.

FREY et al. disclose the manufacture of thermoplastic films based on a polymer containing polyamide blocks and polyether blocks, being antifogging and particularly useful for packaging of fresh food. A hermetic package manufactured with a film of FREY et al. make it possible to preserve fruit or

vegetables which are inside and under an atmosphere containing O₂, CO₂, traces of ethylene and water vapor.

FREY et al. do not disclose a method for the manufacture of dry sausages, or the use of polymeric casings made of a polymer containing polyamide PA12 blocks and polyethylene glycol blocks or polypropylene glycol blocks or polytetramethylene glycol blocks. As a result, applicant respectfully submits that there is no motivation for one skilled in the art to modify the FREY film so that it can accommodate dry sausages.

RAMESH teaches films surrounding cooked meat products. The films utilize a food contact layer comprising a new type of ethylene/acrylic acid copolymer (EAA copolymer). The film may be a mono-layer film but preferably is a multi-layer film comprising two or more layers consisting of polymers, such as polyolefin, polystyrene, polyamide, polyester, etc. The RAMESH publication fails to disclose or suggest the use of a block copolymer of the present invention.

Indeed, the core of the invention disclosed in RAMESH is a new food contact layer of ethylene/acrylic acid copolymer and its use in connection with other layers comprising conventional polymers.

Dry sausages, such as salami and pepperoni, are manufactured using a maturing process, which utilizes bacterial pure cultures in combination with several other parameters. The curing or maturing of dry sausages typically takes place in a

smoke oven. During the maturing process, the pH value becomes lower resulting in water released from the meat mass and diffused from the core of the sausage. The water eventually evaporates through the casing. Thus, the casing must allow for moisture to be removed during the maturing process but, on the other hand, it must simultaneously keep microbes out. Additionally, the casings shall preferably be permeable to smoke.

It was unexpected that dry sausages such as salami sausages can be manufactured by fermentation in a polymeric casing. The polymeric casing according to the invention, containing a block copolymer of polyamide PA12 blocks and polyethylene glycol blocks or polypropylene glycol blocks or polytetramethylene glycol blocks is sufficiently permeable to moisture. The polymer exhibits a smooth finish and good mechanical properties. It can also be smoked and matured while preventing copolymers from entering the casing.

Indeed, a block copolymer is a true polymer, not a blend of polyamide and polyether.

In view of the above, applicant believes that one of ordinary skill in the art would lack the motivation to combine and modify the FREY et al. and RAMESH publications in a manner so as to obtain the claimed invention. Indeed, while FREY et al. relate to packaging comprising a thermoplastic film based on a polymer containing polyamide blocks and polyether blocks, RAMESH is directed to a food packaging material wherein, the meat-

contact surface of the film comprises an olefin/acrylic acid copolymer. In view of the contrasting materials, applicant believes that one of ordinary skill in the art would lack the motivation to combine and modify the cited publications in a manner so as to obtain the claimed invention.

At this time, the Examiner is respectfully reminded that a critical step in analyzing obviousness pursuant to 35 USC §103(a) is casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, only guided by the publications and then-accepted wisdom in the field. Close adherence to this methodology is important in cases where the invention itself may prompt an Examiner to "fall victim to the insidious effect of a hindsight syndrome, wherein that which only the invention taught is used against its teacher." Indeed, to establish a prima facie case of obviousness, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ 2d 1313, 1362 (Fed. Circ. 2000). The fact that the prior art could be so modified would not have made the modification itself obvious unless the cited publications themselves suggested the desirability of the modification. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Circ. 1984).

In light of the lack of a motivation, suggestion or teaching of the desirability of making the claimed combination,

applicant believes that the publications fail to disclose or suggest the claimed invention.

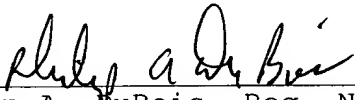
Thus, in view of the above, applicant believes that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Please charge the terminal disclaimer fee of \$130 to Deposit Account No. 25-0120.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. \$1.16 or under 37 C.F.R.\$1.17.

Respectfully submitted,

YOUNG & THOMPSON


Philip A. DuBois, Reg. No. 50,696
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

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Appendix:

The Appendix includes the following item:

- terminal disclaimer